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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180276
Party	Plaintiff Scott Smith
Correspondence Address	Scott Smith 5714 FOLSOM BLVD STE 140 SACRAMENTO, CA 95819 UNITED STATES scott@bizstarz.com
Submission	Opposition/Response to Motion
Filer's Name	Scott Smith
Filer's e-mail	scott@bizstarz.com
Signature	/Scott Smith/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Scott R. Smith,)	Opposition No. 91180276
an individual and citizen of the UNITED STATES,)	
Opposer,)	
)	
V.)	
)	
Entrepreneur Media, Inc.,)	
a California corporation,)	
Applicant.)	

**OPPOSER'S RESPONSE TO
ENTREPRENEUR MEDIA, INC.'S MOTION TO DISMISS**

Pursuant 37 CFR 2.127(d), Opposer, Scott R. Smith ("Smith"), hereby responds to oppose Applicant, Entrepreneur Media, Inc.'s ("EMI"), motion to dismiss under Fed. R. Civ. P. 12(b)(6), and based on the following, Smith requests the Board to deny EMI's motion to dismiss and to allow the proceedings to continue to completion. In support of this Response, Smith respectfully submits the arguments and facts outlined below.

I. INTRODUCTION

In a Motion to Dismiss that's full of desperation and arrogance, and displays a cavalier dedication to defrauding the Trademark Office, EMI absurdly claims that a public relations (PR) professional who provides PR services promoting "entrepreneurs" to the news media, lacks standing to oppose the mark "ENTREPRENEUR" for radio and television programs and for all pre-recorded audio and visual media. Taking this absurdity even higher, EMI also claims that several years ago, the Ninth Circuit was somehow able to rule that a mark that was

not even in existence at the time is not "generic." EMI's arguments are preposterous, illogical and a complete distortion of the facts. These knowingly meritless claims are not grounded in fact, but were made for abusive purposes, to delay, to harass, and to increase the costs of litigation.

Smith asks the Board to take judicial notice of dictionary definitions of the word "entrepreneur." Declaration of Scott Smith ("Smith Decl.") Ex. A¹:

1913: *Webster's Dictionary* (1913) page 498, *noun*. "One who creates a product on his own account; whoever undertakes on his own account an industrial enterprise in which workmen are employed."

1983: *American Heritage Dictionary* (1983), Pages 236, 237 (ISBN 0-440-10068-2) *noun*. "One who organizes, operates, and esp. assumes the risk of a business venture. ...--en'tre•pre•neu'ri•al *adj*."

1993: *Merriam-Webster's¹ Collegiate Dictionary Tenth Edition* (ISBN 0-87779-707-2, 1993 Edition, Page 387): "(**1852**): one who organizes, manages, and assumes the risks of a business or enterprise--entrepreneurial...entrepreneurialism...entrepreneurially... entrepreneurship." [emphasis added]

2001: *Online Etymology Dictionary*, © 2001 Douglas Harper: "**1828**, reborrowing of Fr. *entrepreneur* 'one who undertakes or manages, from O.Fr. *entreprendre* 'undertake.' The word first crossed the Channel c.**1475**, but did not stay." [emphasis added]

2006: Dictionary.com Unabridged (v 1.1) Based on the *Random House Unabridged Dictionary*, © Random House, Inc. 2006. *noun* "a person who organizes and manages any enterprise, esp. a business, usually with considerable initiative and risk. ... **Origin: 1875–80.**" [emphasis added]

¹ When determining this response, the Board may take judicial notice of the documents attached to the Smith Declaration, which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 205(b).

EMI claims that Smith's opposition is an "attempt to have a different adjudicating body find in favor of Smith on what are essentially the same issues and facts." This is also a knowingly meritless claim not grounded in fact, but made for abusive purposes, to delay, to harass, and to increase the costs of litigation. EMI knows better than anybody else, that Smith's opposition is against a *new* mark for *different* goods and services, and for *different* issues than previously litigated. The mere fact that EMI found it necessary to file for this new ENTREPRENEUR mark shows that EMI knows it's for goods and services that substantially differ from EMI's other marks.

In addition to its meritless and illogical claims, EMI continues its personal and malicious attacks against Smith for the purpose of further damaging Smith's character and reputation. In its motion, EMI included Smith's 2001 personal bankruptcy petition, fully knowing that this information falls outside the scope of the pleadings, and has no bearing on the merits or outcome of EMI's motion. Smith's bankruptcy is completely irrelevant to whether or not the term "entrepreneur" is descriptive, generic or whether or not EMI has defrauded the USPTO. EMI's motivation for including this information is solely for the purpose of harming and harassing Smith. In fact, other EMI attacks against Smith's personal bankruptcy petition have been so suspect, that a U.S. Bankruptcy Court Judge issued a \$10,000,000.00 Order to Show Cause against EMI and its attorneys. Smith Decl. Ex. B.

Despite employing a team of hugely expensive attorneys from one of the world's largest law firms, and taxing Smith and the Board with knowingly meritless

arguments and nearly two hundred (200) pages of irrelevant exhibits, EMI cannot prevail in its motion. EMI's allegations are a complete distortion of the facts, not grounded in fact, but were made for abusive purposes, to delay, to harass, and to increase the costs of litigation.

II. EMI FAILED TO REBUT ALLEGATIONS OF FRAUD

Like the ignored elephant in the room, EMI's inability to address Smith's allegations of fraud, is impossible to ignore. EMI desperately tries to convince the Board that Smith's allegations are "groundless" and his motion should be dismissed. Yet EMI does not address Smith's allegations of fraud anywhere in its motion. EMI does not offer any argument to the contrary. Smith's allegations of fraud are completely missing from the 1,000's of words expended in EMI's motion. This is significant because Smith's allegations of fraud are numerous and paramount to his opposition.

EMI not denying Smith's allegations of fraud is analogous to someone being charged with a parking violation and felony possession of a stolen vehicle, and unable to prove ownership of the vehicle, filing a motion to get the entire case dismissed by only denying the parking violation, the far less serious charge. If Smith's allegations of fraud were "groundless," EMI rightfully would have vehemently denied these allegations, figuratively screaming their denials from the mountaintops. Instead, EMI files a meritless Motion to Dismiss for abusive purposes, to delay, to harass, and to increase the costs of litigation.

EMI's inability to deny Smith's allegations of fraud clearly shows that Smith's allegations must be true as plead. There's no plausible excuse for EMI to file a

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